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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,568	09/30/2003	Trudce Klautky	11.030011US	7905

41696 7590 11/08/2007  
VISTA IP LAW GROUP LLP  
12930 Saratoga Avenue  
Suite D-2  
Saratoga, CA 95070

EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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11/08/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/676,568

**Applicant(s)**

KLAUTKY ET AL.

**Examiner**

Lyle A. Alexander

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 and 18-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-16 and 18-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Licha et al. (USP 6,258,340), EP 0573535 or Zahniser et al. (USP 5,168,066).

Licha et al. teach a method using NIR, water soluble dyes and optical interrogation to determine the physiological properties of cytological samples. Column 8 teaches adding the dye to the tissues and irradiating the tissue with light in the range of 650-1200nm. The radiation that is not absorbed and the fluorescent radiation are electronically recorded by a CCD camera to produce a "synthetic image". The resultant "synthetic image" is recorded and compared against certain parameters to obtain a diagnosis. The claimed "optical interrogating" has been read on the taught "synthetic image". The claimed "attaching a positive designator to the sample .... attaching a manipulation designator" have been read on the taught steps of recording the "synthetic image" and comparison to certain parameters to obtain a diagnosis.

EP 0573535 teach in claims 1-10 a method of analysis of a biological specimen comprising irradiating the sample, detecting the emitted light with a CCD camera, storing the data and subsequent comparison to determine the physiological condition of the specimen. The claimed "optical interrogating" has been read on the taught storing the image. The claimed "attaching a positive designator to the sample .... attaching a

manipulation designator" have been read on the taught steps of recording the image and subsequent comparison to certain parameters to obtain a diagnosis.

Zahniser et al. teach an automated method of cellular analysis using a thionin stain that contrast the cellular nuclear portion from the cytoplasm. The stained cell is subjected to IR and electronically imaged. The subsequent image is stored and compared to determine the diagnosis. The claimed "optical interrogating" has been read on the taught electronic imaging. The claimed "attaching a positive designator to the sample .... attaching a manipulation designator" have been read on the taught steps of recording the image and comparison to certain parameters to obtain a diagnosis.

### ***Response to Arguments***

Applicant's arguments filed 9/6/07 have been fully considered but they are not persuasive.

Applicants state Licha does not teach the claimed "optical interrogating a cytological sample in a solution in a vessel". In the absence of Applicants' better defining what method steps are intended, these limitations are sufficiently broad to have been properly read on Licha's NIR diagnostic method. Applicants states Licha does not teach the claimed "positive designator" as described in light of the specification. The Office has interpreted "positive designator" in its broadest context and believes it has been properly read on Licha. Applicants' should consider claiming the exact steps that are contemplated by the "positive designator". Lastly, Applicants state Licha does not teach an automated method of classifying tissues. The Office maintains these

limitations are sufficiently broad to be read on a method that differentiates cells, such as that of Licha.

Applicants state EP 0573535 ("Rava" hereafter) does not teach the claimed attaching a positive or manipulation designator to the sample. The Office maintains these limitations are sufficiently broad to be properly read on Rava as described in the above rejection.

Applicants traverse Zahniser stating the cells being analyzed are not in a vessel. The claimed "vessel" is sufficiently broad to be properly read on the taught microscope slide.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander  
Primary Examiner  
Art Unit 1743

